



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 21, 1995

Ms. Melissa Winblood  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR95-407

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 22288.

The city of El Paso (the "city") received an open records request for an "entire file involving an El Paso Police Department case." You state that there is a pending "civil lawsuit which appears to be based upon the facts and reports contained" in the requested case file. The case file involves an alleged offense of driving while intoxicated, but the case was not prosecuted, and no criminal case is pending. The city states it no longer has the traffic accident report in its possession.<sup>1</sup> The city has made available all of the requested information in the case file except for the Department of Public Safety Crime Laboratory Report, which contains blood alcohol test results. The city claims that the blood alcohol test results are excepted from public disclosure on the basis of constitutional or common-law privacy under section 552.101 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information must be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and the information is not of legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U. S. 931 (1977). Although the fact that a driver submitted to a blood alcohol test at the request of a public

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<sup>1</sup>We note that a governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990).

safety officer may be highly intimate or embarrassing, it is of legitimate public interest that the driver may have been driving while under the influence of alcohol. Open Records Decision No. 478 (1987) at 4. We believe there is a legitimate public interest in the blood alcohol results at issue in this request. Therefore, the city may not withhold the information on the basis of common-law privacy.

The city also claims that constitutional privacy excepts the blood alcohol test results from required public disclosure. The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. See Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," that is, marriage, procreation, contraception, family relationships, and child rearing and education. See Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 (1987) at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)). The blood alcohol information at issue here does not warrant constitutional privacy protection. "By driving on public roadways, persons take what might otherwise be private behavior out of the realm of strictly personal affairs for purposes of the constitutional [privacy] test." Open Records Decision No. 478 (1987) at 4. Therefore, the blood alcohol results may not be withheld on the basis of constitutional privacy. The city must release the requested information in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/rho

Ref.: ID# 22288

Enclosures: Submitted documents

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